



**State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES**

6 Hazen Drive, P.O. Box 95, Concord, NH 03302-0095
(603) 271-3503 FAX (603) 271-2867




October 28, 2002

Mr. Arthur S. Genualdo
Chairman, Board of Selectmen
Town of Sandown
PO Box 1756
Sandown, NH 03873

Re: Administrative Fine by Consent Agreement Fine No. AF 02-029

Dear Mr. Genualdo

Enclosed for your records is a copy of the Administrative Fine by Consent Agreement in this matter executed by Robert R. Scott, Chief Air Programs Manager of the Air Resources Division, and accepted by Assistant Commissioner Bisbee on October 28, 2002. On behalf of the Department of Environmental Services, thank you for your cooperation in resolving this matter.

Sincerely,
COPY

Michael P. Sclafani
DES Legal Unit

Enclosure

cc: R. Scott, DES Chief Air Programs Mgr.
G. Rule, DES Legal Unit
R. Reed, DES WMD
R. Kurowski, EPA, Region I



**State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES**

6 Hazen Drive, P.O. Box 95, Concord, NH 03302-0095
(603) 271-1370 FAX (603) 271-1381



Town of Sandown
PO Box 1756
Sandown, NH 03873

Attn Mr. Arthur S. Genualdo
Chairman,
Board of Selectmen

Re: Town of Sandown
Municipal Burn Site

**ADMINISTRATIVE FINE
BY CONSENT**

No. AF 02-029

I. INTRODUCTION

This Administrative Fine by Consent is entered into by and between the Department of Environmental Services, Air Resources Division, ("the Division") and the Town of Sandown pursuant to RSA 125-C: 15, I-b. This Administrative Fine by Consent is effective upon signature by all parties.

II. PARTIES

1. The Department of Environmental Services, Air Resources Division ("DES") is a duly constituted administrative agency of the State of New Hampshire, having its main office at 6 Hazen Drive, Concord, NH 03302-0095.
2. The Town of Sandown ("the Town") is a duly-constituted municipality of the State of New Hampshire having a mailing address of PO Box 1756. Sandown, NH 03873.

III. BACKGROUND

1. RSA 125-C authorized the DES to regulate sources of air pollution. RSA 125-C:4 authorizes the Commissioner to adopt rules relative to the prevention, control, abatement, and limitation of air pollution in New Hampshire. Pursuant to this authority, DES has adopted NH Admin. Rules Env- A 100 *et seq.*
2. RSA 125-C:15, I-b(b) authorizes the Commissioner of DES to impose administrative fines of up to \$2,000 per violation for violations of RSA 125-C and rules adopted pursuant thereto.
3. The Town operates a solid waste transfer station and burn pile on property located at 24 Depot Road in Sandown, NH ("the Facility"), and more particularly identified on Sandown Tax Map 11, as Lot 3.

4. Env-A 1001.04(a)(2) requires any city or town to obtain authorization from the Division prior to burning brush or untreated wood, provided that the material originates in the State. These restrictions are further defined in the *Authorization to Burn Brush and Untreated Wood* No. 1508 ("the Authorization to Burn") which was issued by DES on April 20, 2000. The Authorization to Burn required the Town to operate the burn pile in accordance with Env-A 1000.

IV. ALLEGATIONS

1. On March 15, 2001, the Division issued a Letter of Deficiency ("LOD") No. ARD 2001-005 to the Town for violations of the Authorization to Burn and Env-A 1000.
2. The Division requested that the Town respond within ten (10) days of receipt of the LOD. The Town never responded to the LOD.
3. On May 10, 2001, DES renewed the Authorization to Burn. The Authorization to Burn requires the Town, among other things, to operate the burn pile in accordance with Env-A 1000.
4. On June 6, 2001, Division personnel conducted a follow-up inspection at the Facility and again observed charred non-conforming materials in the burn pit including: wafer board, assorted metals, one aerosol can, drywall, and one shovel. The Division inspector also observed the following non-conforming materials in the burn pile: wafer board, furniture, and plywood. The Division inspector left two copies of the June 6, 2001 *Notice of Inspection*, a copy of the open burning rules and open burning fact sheets at the Town Office of Selectmen.
5. The Town violated Env-A 1001.04(a)(2), and the Authorization to Burn by burning materials other than brush or untreated wood at the Facility.
6. On May 14, 2002, the Division issued the Town a letter that stated the alleged violations as well as typical steps that other municipalities have taken to comply with and prevent future violations of Env-A 1000. The letter also stated that the Division would be willing to settle the matter using an Administrative Fine by Consent.
7. On July 25, 2002, DES received a letter from the Town. The letter indicated that the Town would be willing to comply with the conditions of the May 14, 2002 letter that would prevent future violations of Env-A 1000.

V. ADMINISTRATIVE FINES, PAYMENT, WAIVER OF HEARING

1. The Division has determined the violation identified in IV. 5 above to be major deviation from the requirements with a minor potential for harm. RSA 125-C:15, I-b(b) specifies a fine range of \$1,501-\$2,000. Based upon the Division's assessment of the environmental impact of the violations and the Town's compliance history, the Division is seeking a fine of \$1,550 for this violation.

2. DES agrees to suspend the \$1,550 fine contingent upon the Town complying with the following:

- a. Conduct all future burning in accordance with Env-A 1000 and the Authorization to Burn for a period of two years from the date of execution of this Agreement by the Town and the Commissioner of DES;
- b. Within 30 days of execution of this Agreement, the Town will develop an informational flyer identifying proper procedures for burn pile use and hazards associated with burning non-conforming materials such as painted wood, treated wood, plastic, etc. The flyer will be based on DES's open-burning Fact Sheet (copy enclosed). Upon approval by DES, distribute this flier to staff, volunteers, and all persons involved in the burn pile activity;
- c. Within 30 days of execution of this Agreement, the Town will post "Do's and Don'ts" signs at the Facility which point out proper materials to be burned;
- d. The Town will enforce a stricter gate policy and post the hours that the Facility is open;
- e. Except for materials that come directly from the Town's Departments, all materials placed, dumped, or otherwise deposited at the Facility for the purpose of burning may only be accepted on the collection days designated by the Board of Selectmen and when direct supervision is present; and
- f. Prior to burning at the Facility, the burn pile shall be inspected for its content; and
- g. The Town will separate materials that do not meet the specification of Condition 2 of the Authorization to Burn, Env-A 101.54 and Env-A 101.286 from the burn area.

3. If the Town fails to comply with the terms of this Agreement or violates any applicable provision within two years of execution of this Agreement, regardless of when the determination is made that the violation occurred, the suspended portions of the fine shall be due and payable upon notice from DES, without opportunity for further hearing or appeal.

4. Any payment that becomes due pursuant to Paragraph V. 1 above shall be paid by certified check made payable to: "Treasurer, State of New Hampshire" and mailed to:

DES Legal Unit
PO Box 95
Concord, NH 03302-0095

5. If any payment is made by check or money order that is returned due to insufficient funds pursuant to NH RSA 6:11-a, DES may charge a fee in the amount of 5% of the face amount of the check or money order or \$25.00, whichever is greater, plus all protest and bank fees, in addition to the amount of the check or money order, to cover the costs of collection.

6. By executing this Administrative Fine by Consent, the Town waives their right to a hearing on or any appeal of the administrative fines identified in Paragraph number 1, and agrees that this Administrative Fine by Consent may be entered into and enforced by a court of competent jurisdiction.
7. The effective date of this Agreement shall be the date on which it has been signed by an authorized representative of the Town, the Director of the Air Resources Division and the Commissioner of DES.
8. No failure by the DES to enforce any provision of this Agreement after any breach or default shall be deemed a waiver of its rights with regard to that breach or default, nor shall such failure be construed as a waiver of the right to enforce each and all of the provisions of this agreement on any further breach or default.

Town of Sandown

By: Arthur S. Genuardo
Sandown Board of Selectmen
Duly Authorized

Date _____

COPY
By: Angela A. Sherwood
Sandown Board of Selectmen
Duly Authorized

Date: 10/7/02

COPY
By: Russ Collins
Sandown Board of Selectmen
Duly Authorized

Date: 10/7/02

Department of Environmental Services

COPY
Robert R. Scott, Chief Air Programs Manager
Air Resources Division

Date: 10/28/02

COPY
George Dana Bisbee, Assistant Commissioner
Department of Environmental Services

Date: 10/28/02